



Republican Policy Committee

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Clinton Would Be Wrong to Veto S. 1936

Recent Events Reinforce Need To Pass Nuclear Waste Policy Act of 1996

Two recent events reinforce the need for Congress to complete action on S. 1936, the Nuclear Waste Policy Act of 1996.

First, the United States Court of Appeals for the District of Columbia Circuit ruled on July 23, 1996, that the Federal Government has a contractual obligation to start disposing of public utilities' spent nuclear fuel no later than January 31, 1998. This means that if an interim storage site is not completed by January 31, 1998, *the Federal Government will nevertheless be required to begin taking the spent nuclear fuel and disposing of it at some location.* Moreover, failure to accept the wastes might be considered a breach of contract for which a possible remedy could be taxpayer reimbursement of billions of dollars to electric ratepayers.

Secondly, on July 18, 1996, the Clinton Administration obligated the United States to negotiate a "legally-binding" international agreement to achieve "significant" reductions of greenhouse gas emissions by "specified time frames." Thus, the President's well-known opposition to going forward with interim storage for commercial spent nuclear fuel — and thus keep operational the one-quarter of the nation's nuclear reactors that will run out of storage space by 1998 — is at odds with his international commitments to reduce fossil fuel use.

D.C. Circuit Rules DOE Bound By 1982 Nuclear Waste Contract

On July 23, 1996, a unanimous three-judge panel of the United States Court of Appeals for the District of Columbia Circuit vacated the Secretary of Energy's April 28, 1995, final rule in which the agency said it did not have to begin taking commercial spent nuclear fuel until it had constructed a high-level waste storage facility. (*Indiana Michigan Power Company, et al. v. Department of Energy*, Opinion No. 95-1279, July 23, 1996). In its Final Interpretation, the Clinton DOE noted that it was not going to have either the permanent repository or the interim storage facility completed before 1998. Therefore, the agency concluded, the Nuclear Waste Policy Act's January 31, 1998, deadline for DOE to begin accepting spent nuclear fuel was not binding on the Federal Government. The DOE rule had further asserted that it could not provide interim storage at any site other than one selected and constructed pursuant to the NWPA.

The three-judge panel dispatched the DOE's faulty reading of the NWPA and vacated the 1995 DOE Final Interpretation. The Court determined that the DOE is obliged to accept spent nuclear fuel no later than January 31, 1998, as required in the NWPA. The court added that it is "premature to determine the appropriate remedy . . . as DOE has not yet defaulted upon either its statutory or contractual obligation." The court vacated DOE's 1995 Final Interpretation and remanded the matter for further proceedings consistent with the court's opinion.

Thus, unless the Congress passes S. 1936, the DOE may continue to avoid constructing an interim high-level waste nuclear storage site. After the Court's decision, the Federal Government **must** begin accepting the 30,000 metric tons of highly radioactive commercial nuclear spent fuel, presumably to be stored at one of the existing federal nuclear reactor and defense program waste storage sites located in 11 states. It is possible that failure to accept the waste will result in a breach of contract with the civilian nuclear reactor owners, which could entail penalties on the Federal taxpayer. The electric ratepayers of the nuclear powered utilities have already paid the Federal Government over \$11 billion in fees and interest under the 1982 NWPA for the obligation of the DOE to begin accepting spent nuclear fuel by January 31, 1998.

Clinton Opposition to Nuclear Bill At Odds with Climate Change Position

On July 18, 1996, the Clinton Administration signed a Ministerial Declaration at the Second session meeting of the Conference of the Parties on the Framework Convention on Climate Change. Throwing all scientific caution to the winds, the Administration agreed to the non-peer reviewed synopsis of the report of the international scientific panel studying climate change that "the balance of evidence suggests a discernible human influence on global climate." The Administration also signed the United States to the statement that:

"The projected changes in climate will result in significant, often adverse, impacts on many ecological systems and socio-economic sectors, including food supply and water resources, and on human health. In some cases, the impacts are potentially irreversible; developing countries and small island countries are typically more vulnerable to climate change."

If the Administration has decided to lead the world in panicking over the potential for calamitous adverse consequences of global warming caused by buildup of greenhouse gases — principally carbon dioxide from fossil fuel combustion — it would appear to be shamefully inconsistent to oppose nuclear power from which we now produce over 20 percent of this nation's electricity. Without the ability to send their spent nuclear fuel to the DOE, 23 of the nation's 110 nuclear reactors will run out of room in their temporary storage pools by 1998, and a total of 55 will run out of storage space by 2010. Ignoring the necessary contribution of nuclear power to our electricity mix, would only increase our reliance on fossil fuel combustion for our electricity. At least this Administration is nothing if not consistent about wanting everything both ways.

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